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ATTORNEY GENERAL

Office of the Attorney General
State of Texas

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Mr. J. Kirk Brown
General Counsel
Texas Department of Criminal Justice
Institutional Division
P. O. Box 99
Huntsville, Texas 77342-0099

OR91-027

Dear Mr. Brown:

You ask for clarification of Open Records Letter OR90-146. Specifically you ask about your duties to provide records and the proper method of determining the costs of providing those records to an inmate. Your request was assigned ID# 9641.

In Open Records Letter OR90-146, we concluded that an inmate had a special right of access to his own correspondence list, but that he has no right of access to information about the correspondence lists of other inmates. We further stated:

The act gives the requesting party the option of taking notes from or paying for the duplication of public records, or both. . . . However, if giving the requestor access to the records would give the requestor access to confidential information, the requestor's option of access to original records must be denied. . . . Therefore, if doing so would not release any confidential information, the requestor may be permitted to examine the original requested information. If such is not the case, the requestor must pay for the duplication of the information.

Open Records Letter OR90-146 at 2.

Regarding your duty to make available certain information to the inmate, you claim:

We do not believe that it is practical or sensible to provide him with edited pages from our logs.

The information [the requestor] requests will need to be extracted from 1,691 pages of correspondence logs, at least as of May 1, 1990. For the period of interest to [the requestor], the Eastham Unit, which generally has a population of around 2,000 inmates, had 86 pages of certified mail log, 630 pages of in-going legal and special mail logs, and 975 pages of out-going legal and special mail logs.

We believe that, because the material he requests is distributed randomly through those voluminous logs, the only practical way to locate his information is by compilation, and that the 50 page standard set forth in Article 6252-17a, § 9(a) requires that he pay us for our effort in reviewing all the pages.

We understand you to claim that providing the requestor with access to the original materials is not possible without also providing him with access to information that is confidential. For purposes of this letter, we are willing to accept your characterization of the information sought, and, on the basis of the authority cited in Open Records Letter OR90-146, conclude that the requestor may be denied access to the information and compelled to pay for duplication of the redacted information that he has requested.

Subsection 9(a) requires the requestor of information to bear the cost of copies of up to legal-size public records, "including costs of materials, labor, and overhead unless the request is for 50 pages or less of readily available information." These costs include the cost of deleting confidential information. Open Records Decision No. 488 (1988). In requests involving 50 pages or less, the cost of deleting information deemed confidential under the Open Records Act may be considered in determining whether information is "readily available." If the information is not readily available, charges for deletion may be made.

Requestors may be required to post bond for the payment of costs as a condition precedent to the preparation of records when the preparation of the records is "unduly costly" and their reproduction would cause "undue hardship

to the . . . agency if the costs were not paid. V.T.C.S. art. 6252-17a, § 11. We are enclosing a copy of the rule promulgated by the Purchasing and General Services Commission regarding costs that may be charged.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-027.

Yours very truly,



Jim Moellinger
Assistant Attorney General
Opinion Committee

JM/le

Ref.: ID# 9641

Enclosure: Open Records Decision No. 488 (1988);
State Purchasing & General Services Rule

cc: Joseph Ford
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